IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6270 OF 2006

Eknath Kashinath Mhatre & ors ..Petitioners

V/s.

Tukaram Kamlu Mhatre & ors ..Respondents

B.D.Joshi & Ms.Pushpa Diwan for the petitioners

CORAM : S.C.DHARMADHIKARI, J.

DATE : 15TH JUNE, 2007

P.C.

1. Mr.B.D.Joshi appearing for the petitioners submits that the Courts below have denied interim relief to the petitioners/original plaintiffs on the basis that a son of plaintiff No.1 who has been partner with the respondents/original defendants has been paid his share of three galas and Rs.1,00,000/- by a cross cheque in December, 2003. However, according to B.D.Joshi, the Courts below have mixed up the issue in as much as until it is established and proved at the trial that arrangement between the partners was to work as a consideration for the petitioners entering into

Development Agreement with the respondents it cannot be said that payment to the son of the plaintiff No.1 and allotment of gala is in compliance with the obligations of the original defendants under their agreement with the plaintiffs which is independent.

2. In my view, the Courts below have merely held that in the light of the pleadings, at this prima facie stage, it will not be possible to grant the interim injunction as prayed. Several reasons are assigned for denial of this relief. Merely because the interim injunction has been denied to the petitioners does not mean that the petitioners would not be able to establish and prove at the trial that the obligations being independent the issues arising out of the partnership between the son of the petitioner/original plaintiff No.1 and defendant. So also the suit agreement cannot be mixed up. All findings rendered at this stage are tentative and prima facie and should not in any manner prejudice the case of the petitioners at the trial. It would always be open for the petitioners

to prove by leading the evidence and placing such material as it is permissible in law that these obligations cannot be mixed up and I have no doubt in my mind that such pleas be considered on their own merits uninfluenced by any observations by in the impugned order. All the contentions of both sides on merits are expressly kept open. The petition is dismissed with the above clarification.

(S.C.DHARMADHIKARI, J.)